

THE HONORABLE DAVID G.
ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

USAA GENERAL INDEMNITY
COMPANY,

Plaintiff,

v.

LG ELECTRONICS USA, INC. et al.,

Defendants.

Case No.: 3:22-cv-05854-DGE

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

This action concerns claims by USAA General Indemnity Company (“USAA”), as subrogee of Tracy Roberts, to recover money it paid to its insured Ms. Roberts for property damage replacement and repair, as well as associated expenses, after a washing machine owned by Ms. Roberts overfilled and caused water damage to her property. Defendant LG Electronics USA, Inc. (“LGEUS”) is alleged by USAA to have marketed the washing machine at issue.

LGEUS and USAA (collectively the “Parties”) expect to exchange documents and information relating to Ms. Roberts’ claims that includes private and confidential personal information. The Parties also expect to exchange documents and information in discovery relating to USAA and LGEUS’s private, confidential, and proprietary commercial business

1 practices for which special protection may be warranted. Accordingly, the Parties hereby
2 stipulate to and petition the Court to enter the following Stipulated Protective Order. The
3 Parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
4 blanket protection on all disclosures or responses to discovery; the protection it affords from
5 public disclosure and use extends only to the limited information or items that are entitled to
6 confidential treatment under the applicable legal principles and it does not presumptively
7 entitle Parties to file confidential information under seal.

8 2. “CONFIDENTIAL” MATERIAL

9 “Confidential” material shall include the following documents and tangible things
10 produced or otherwise exchanged:

- 11 • Documents and communications related to the design and manufacture of LG
- 12 washing machine Model No. WM2650HRA and its component parts;
- 13 • UL certification report;
- 14 • Service bulletins for Model No. WM2650HRA; and
- 15 • Any Documents that Plaintiff and LGEUS agree should be marked

16 Confidential. This agreement must be documented in writing.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as
19 defined above), but also (1) any information copied or extracted from confidential material;
20 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
21 testimony, conversations, or presentations by the Parties or their counsel that might reveal
22 confidential material. However, the protections conferred by this agreement do not cover
23 information that is in the public domain or becomes part of the public domain through trial or
24 otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is
3 disclosed or produced by another party or by a non-party in connection with this case only
4 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
5 be disclosed only to the categories of persons and under the conditions described in this
6 agreement. Confidential material must be stored and maintained by a receiving party at a
7 location and in a secure manner that ensures that access is limited to the persons authorized
8 under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the Court or permitted in writing by the designating party, a receiving party may
11 disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information for this
14 litigation;

15 (b) the officers, directors, and employees (including in-house counsel) of
16 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
17 Parties agree that a particular document or material produced is for Attorney’s Eyes Only and
18 is so designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for
20 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A);

22 (d) the Court, Court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication
24 of confidential material, provided that counsel for the party retaining the copy or imaging
25 service instructs the service not to disclose any confidential material to third parties and to
26 immediately return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
4 Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
5 confidential material must be separately bound by the court reporter and may not be
6 disclosed to anyone except as permitted under this agreement;

7 (g) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing
10 or referencing such material in court filings, the filing party shall confer with the designating
11 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
12 party will remove the confidential designation, whether the document can be redacted, or
13 whether a motion to seal or stipulation and proposed order is warranted. During the meet
14 and confer process, the designating party must identify the basis for sealing the specific
15 confidential information at issue, and the filing party shall include this basis in its motion to
16 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
17 forth the procedures that must be followed and the standards that will be applied when a
18 party seeks permission from the Court to file material under seal. A party who seeks to
19 maintain the confidentiality of its information must satisfy the requirements of Local Civil
20 Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this
21 requirement will result in the motion to seal being denied, in accordance with the strong
22 presumption of public access to the Court’s files.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
25 party or non-party that designates information or items for protection under this agreement
26 must take care to limit any such designation to specific material that qualifies under the

1 appropriate standards. The designating party must designate for protection only those parts
2 of material, documents, items, or oral or written communications that qualify, so that other
3 portions of the material, documents, items, or communications for which protection is not
4 warranted are not swept unjustifiably within the ambit of this agreement. Mass,
5 indiscriminate, or routinized designations are prohibited. Designations that are shown to be
6 clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
7 encumber or delay the case development process or to impose unnecessary expenses and
8 burdens on other parties) expose the designating party to sanctions. If it comes to a
9 designating party's attention that information or items that it designated for protection do not
10 qualify for protection, the designating party must promptly notify all other parties that it is
11 withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (*see, e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement
15 must be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents
17 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
19 that contains confidential material. If only a portion or portions of the material on a page
20 qualifies for protection, the producing party also must clearly identify the protected
21 portion(s) (*e.g.*, by making appropriate markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: The
23 Parties and any participating non-parties must identify on the record, during the deposition or
24 other pretrial proceeding, all protected testimony, without prejudice to their right to so
25 designate other testimony after reviewing the transcript. Any party or non-party may, within
26 15 days after receiving the transcript of the deposition or other pretrial proceeding, designate

1 portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires
2 to protect confidential information at trial, the issue should be addressed during the pretrial
3 conference.

4 (c) Other tangible items: The producing party must affix in a prominent
5 place on the exterior of the container or containers in which the information or item is stored
6 the word "CONFIDENTIAL." If only a portion or portions of the information or item
7 warrant protection, the producing party, to the extent practicable, shall identify the protected
8 portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating
11 party's right to secure protection under this agreement for such material. Upon timely
12 correction of a designation, the receiving party must make reasonable efforts to ensure that
13 the material is treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a designating party's
17 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
18 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
19 does not waive its right to challenge a confidentiality designation by electing not to mount a
20 challenge promptly after the original designation is disclosed.

21 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
22 regarding confidential designations without Court involvement. Any motion regarding
23 confidential designations or for a protective order must include a certification, in the motion
24 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
25 conference with other affected parties in an effort to resolve the dispute without court action.

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1 The certification must list the date, manner, and participants to the conference. A good faith
2 effort to confer requires a face-to-face meeting, video call, or a telephone conference.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
6 of persuasion in any such motion shall be on the designating party. Frivolous challenges,
7 and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
8 burdens on other parties) may expose the challenging party to sanctions. All parties shall
9 continue to maintain the material in question as confidential until the Court rules on the
10 challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a copy of
17 the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order
19 to issue in the other litigation that some or all of the material covered by the subpoena or
20 order is subject to this agreement. Such notification shall include a copy of this agreement;
21 and

22 (c) cooperate with respect to all reasonable procedures sought to be
23 pursued by the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
26 confidential material to any person or in any circumstance not authorized under this

1 agreement, the receiving party must immediately (a) notify in writing the designating party
2 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
3 the protected material, (c) inform the person or persons to whom unauthorized disclosures
4 were made of all the terms of this agreement, and (d) request that such person or persons
5 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
6 Exhibit A.

7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
12 provision is not intended to modify whatever procedure may be established in an e-discovery
13 order or agreement that provides for production without prior privilege review. The Parties
14 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON-TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each
17 receiving party must return all confidential material to the producing party, including all
18 copies, extracts, and summaries thereof. Alternatively, the Parties may agree upon
19 appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
21 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
23 work product, even if such materials contain confidential material.

24 The confidentiality obligations imposed by this agreement shall remain in effect until
25 a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 DATED: 7/13/2023

COZEN O'CONNOR

4
5 By /s/ Cameron D. Young

Brian R. Campbell, WSBA #36510

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8 Attorneys for Plaintiff

9 DATED: July 17, 2023

BULLIVANT HOUSER BAILEY PC

10
11 By /s/ Megan Cook

Megan Cook, WSBA #45943

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John Carley, WSBA #59819

E-mail: john.carley@bullivant.com

14 Attorneys for Defendant LG Electronics
15 USA, Inc.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents, electronically stored information (ESI) or information, whether inadvertent
4 or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other
5 federal or state proceeding, constitute a waiver by the producing party of any privilege
6 applicable to those documents, including the attorney-client privilege, attorney work-product
7 protection, or any other privilege or protection recognized by law. This Order shall be
8 interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The
9 provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
10 shall serve to limit a party's right to conduct a review of documents, ESI or information
11 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or
12 protected information before production. Information produced in discovery that is protected
13 as privileged or work product shall be immediately returned to the producing party.

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15 DATED this 15th day of August 2023.

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21 _____
David G. Estudillo
United States District Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Western District of Washington on
 _____ [date] in the case of ***USAA General Indemnity Company v. LG Electronics***
USA, Inc., et al., 3:22-cv-05854-DGE. I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____